

by in an account and we want to rescind those funds, then that is pretty straightforward. We direct the rescission of those funds and do not earmark it to a specific State. If we are going to start the game, though, of earmarking—which I believe is what this does—obviously there will be a lot of other Senators who believe in earmarks who will say I want my turn also. I do not happen to believe in earmarks, but some of my colleagues would say: Look, if you can do this for one State, you can do it for my State. So if every State can direct specific spending to their own State, then we are right back in the business of earmarking.

I will not necessarily speak to the purposes behind the change in the project, although it is pretty clear from newspaper articles out of Nevada that this money is going to be used for a road project. I will leave the defense of the policy to others. What I will say is that the provision without a shadow of a doubt meets the definition of an earmark under rule XLIV of the Standing Rules of the Senate. The bottom line is that the provision in the bill will direct Federal funds to a single State.

Rule XLIV of our standing rules, the Standing Rules of the Senate, as we all know, defines what is a congressionally directed spending item. I will quote that rule:

... a provision or report language included primarily at the request of a Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State—

It goes on to say:

locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

There was a reason why that language is included in that rule and it is what is happening here. If you could simply direct funds to your State, then, as I said previously, we are back in the earmarking business.

Furthermore, the bill before the Senate was written based on the understanding that there would be no earmarks. Everybody is running around saying there are no earmarks in the bill. Everybody has been very public about saying that. That posture was well received. It was commended, in fact. It was commended, in my judgment, in part because many understood that a highway bill that included earmarks simply would not pass. In other words, a “no earmark” policy was necessary to get this bill done.

So at the moment I am very concerned that we will have damaged the Senate bill, our legislative process, and hurt the chances of a highway bill getting done. I think the highway bill makes a lot of sense for our country, but we have to solve this kind of problem. I cannot support the bill with an

earmark for one State, the State of Nevada.

Even the President of the United States has weighed in on this. He has taken a very strong stand. He said, “If a bill comes to my desk with an earmark inside, I will veto it.”

This highway bill is far too important for us to jeopardize its passage or to invite a veto by the President, just because the provision is very hard to find and buried at page 463.

I think there is a way to move forward on the highway bill, at least as far as this is concerned. I think our State and local leaders are hoping we pass a highway bill. There are a lot of good things that could happen with it, but this has to come out of the bill. This needs to change, and my hope is the Senate will agree to my amendment to do just that.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEAHY. Madam President, I ask unanimous consent to speak for up to 5 minutes as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. FRANKEN). Morning business is now closed.

EXECUTIVE SESSION

NOMINATION OF ADALBERTO JOSE JORDAN TO BE UNITED STATES CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The bill clerk read the nomination of Adalberto Jose Jordan, of Florida, to be United States Circuit Judge for the Eleventh Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate equally divided and controlled in the usual form.

Mr. LEAHY. Mr. President, today the Senate will finally vote on the nomination of Judge Adalberto Jordan of Florida to fill a judicial emergency vacancy on the Eleventh Circuit. Finally, after a 4 month Republican filibuster that was broken by an 89 to 5 vote on Monday, and after Republicans insisted on two additional days of delay, the Senate will have a vote.

Judge Jordan is by any measure the kind of consensus nominee who should have been confirmed after being reported unanimously by the Judiciary Committee last October. Despite the strong support of his home State Senators, Senator NELSON, a Democrat, and Senator RUBIO, a Republican, Republicans filibustered and delayed this confirmation for months. They prevented the Senate from voting on Judge Jordan's nomination in October, in November, in December, and in January. And it should not have taken another 2 days after the Senate voted overwhelmingly to bring the debate to a close to have this vote.

This superbly-qualified nominee will be the first Cuban-American on the Eleventh Circuit. His record of achievement is beyond reproach. The only statements about this nominee—by me, by Senator NELSON and even by the Republican Senators who spoke—described him as qualified and worthy of confirmation. The stalling, the delays, the obstruction, even the votes against ending the filibuster were all about something else, some collateral issue. They should not have marred this process and complicated this nomination. They should not have delayed this moment when Cuban Americans will see one of their own elevated to the second highest court in the land. I appreciate the attention that Hispanics for a Fair Judiciary and the Hispanic National Bar Association have given this important nomination. Their work will finally be rewarded, as well.

The junior Senator from Kentucky held up this nominee for his own purposes—purposes having nothing to do with the nominee. He did it in order to gain leverage to force a vote on an unrelated and ill-advised amendment. You cannot amend a nomination. So now that he has forced the Senate into 2 days of inactivity, the Senate will finally vote.

As I said yesterday, the goals of Senator PAUL's amendment are already the law of the land. The new conditions on military aid for Egypt, which I wrote with Senator GRAHAM, passed by an overwhelming bipartisan majority and were signed into law just 2 months ago without Senator PAUL's support. Those conditions require certification by the Secretary of State that the Egyptian military is supporting the transition of civilian government and protecting fundamental freedoms and due process. Unlike Senator PAUL's proposed amendment, these conditions again, already the law—do not pose a risk of backfiring on us and on our ally Israel.

Moreover, once this misguided obstruction is ended and the Senate has voted to confirm Judge Jordan to fill the judicial emergency vacancy on the Eleventh Circuit, the Senate will turn back to its work on the surface transportation bill. As Senator BOXER said this morning, that bipartisan bill can save or create 2.8 million jobs. That, too, should be a priority, not a pin